

**Order 96-3-64**

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC.**

SERVED April 4, 1996

Issued by the Department of Transportation
on the 29th day of March, 1996

**New U.S. -Hong Kong Combination
Air Service Opportunities**

Docket OST-95-765

ORDER SELECTING NEW HONG KONG SERVICES

I. Summary

By this order, we select the proposal of Northwest Airlines, Inc. for service from Detroit as a new gateway between the United States and Hong Kong. We also confirm our February 14 oral selection of Chicago as a new gateway to Hong Kong and allocation of frequencies to United. We will, however, decline to award operating authority or frequencies to American, as the U.S.-Hong Kong aviation arrangement does not provide for the code-share service that American wishes to operate; moreover, the Hong Kong authorities have indicated that they will not accept such services on an extrabilateral basis.

II. Background and Pleadings

On September 29, 1995, the United States and Hong Kong signed a Memorandum of Understanding (MOU), making possible expanded opportunities for U.S. carriers at new gateways.¹ Specifically, the United States may designate two additional gateways for service to Hong Kong, with the option of including a third gateway if an existing multiple-designation gateway is changed to single designation. Chicago may be served by two carriers, but service is limited to a total of 14 weekly frequencies until January 1, 2000. Any other new gateway can receive service from only one U.S. carrier, without frequency limits. The Department instituted this case,

¹ In addition to service from Alaska, Guam/Commonwealth of Northern Marianas, and Hawaii, service may be operated at a total of six other gateways. The United States has retained New York, Los Angeles, Seattle and San Francisco, which are multiple-designation gateways, as four of the six selections because U.S. carriers are currently serving these gateways.

New U.S.-Hong Kong Combination Air Service Opportunities, Docket OST-95-765, to consider applications for the newly available air service opportunities.

Three U.S. carriers filed applications for new operational authority in the U.S.-Hong Kong market: American, to serve Dallas/Fort Worth and Chicago, both over Vancouver; Northwest, to serve Detroit; and United, to serve Chicago.

Each applicant answered the other applications. In addition, Delta Air Lines answered in opposition to Northwest's application. Each applicant focused on its proposed operations, including supporting arguments for particular gateway service and responses to proposals of fellow applicants.

Several civic parties answered the applications. Wayne County (Michigan) and the Detroit Metropolitan Wayne County Airport filed in support of Northwest; the Dallas/Fort Worth Parties, in support of American;² the Port of Seattle in opposition to being converted to a single designation gateway; the City of Chicago in support of American and United; and the Port of Portland in support of Delta's answer.

There was no obstacle of mutual exclusivity to preclude the grant of frequencies to United, regardless of our decisions on the other issues, and on February 14, 1996, we accordingly orally granted United seven Chicago-Hong Kong frequencies.³ We will confirm that action here, and need not devote further discussion to the merits of United's application.

A. Remaining Applications

American proposes service between Dallas/Ft. Worth and Hong Kong, and between Chicago and Hong Kong, and seeks exemption authority for both services. American intends to serve these routes under a code-sharing agreement with Canadian Airlines International, whereby flights from Chicago and Dallas/Ft. Worth will be routed through Vancouver, with transpacific and Chicago-Vancouver service provided by Canadian International. American argues that it cannot implement nonstop service to Hong Kong until aircraft with sufficient range become available from manufacturers.⁴ Northwest proposes to serve Detroit as a single-designation gateway to Hong Kong, using 747 equipment, but would not inaugurate service until November 1, 1997, pending approval of a flight routing over China and Siberia. Northwest already holds the necessary certificate authority, and therefore requests only the selection of Detroit as a gateway and designation of Northwest to serve it.

² The Dallas/ Fort Worth parties consist of the Cities of Dallas and Fort Worth, Texas; the Chamber of Commerce of Dallas and Fort Worth, Texas; the Dallas/Fort Worth International Airport Board; and the North Texas Commission. The Dallas/ Fort Worth parties also filed a motion on December 7, 1995 for leave to file and response to Northwest Airlines, which we will grant.

³ See Notice of Action Taken, dated February 23, 1996.

⁴ Application of American, at 2. The air-mile distance between Dallas/Ft. Worth and Hong Kong is 8128; for Detroit, 7848; and for Chicago, 7799. OAG, Worldwide Edition, February 1996 ("To Hong Kong").

B. Answers

American, in its answer, suggests that Detroit be included as a seventh gateway following the conversion of an existing multi-designation gateway to single designation, to accommodate all the proposed services. American also recommends that the Department defer granting Northwest's application, given the long delay before it would implement service; this would allow the Department to wait until 1997 to decide which gateway to convert. Delta filed an answer opposing Northwest's application, arguing that Northwest will not be prepared to offer service until 1997 and that Northwest is dependent upon approval by Chinese and Russian officials for a new navigation route to implement its Detroit-Hong Kong service. Delta also opposes American's third-country code-sharing service as beyond the scope of the U.S.-Hong Kong bilateral agreement.

Northwest, in its answer, opposes any suggestion to defer approving its proposed Detroit-Hong Kong service. Northwest also challenges Delta's opposition to Northwest's application, arguing that Delta has no standing to argue against Northwest's admittance to U.S.-Hong Kong service. United argues that American's code-sharing proposal with Canadian Airlines is extrabilateral and argues that, because the MOU is silent on the issue of code sharing, there is no indication that Hong Kong will approve the U.S.-Vancouver-Hong Kong operations proposed by American.

The Dallas/Ft. Worth parties support American's application and express their conviction that the Dallas/Ft. Worth-Vancouver-Hong Kong service will be successful. The Dallas/Ft. Worth parties also support American's recommendation that the Department defer action on Northwest's application until next year and then include Detroit as the seventh gateway. The City of Chicago requests selection of O'Hare International Airport as a new gateway, and supports American's and United's applications for Chicago-Hong Kong service.

The Port of Seattle, answering all three applications, opposes being converted from a multiple-designation gateway to a single-designation gateway.

C. Replies

United, in its consolidated reply, argues that *Ashbacker* does not compel inclusion of American's application in a comparative proceeding, given the proposal's extrabilateral character.⁵ American emphasizes that the U.S.-Hong Kong agreement is silent with respect to code-sharing agreements and requests that the Department persuade Hong Kong to authorize the American/Canadian code-sharing agreement, as favoring enhanced competition. The Port of Portland opposes the applications of American and Northwest, citing American's reliance on its code-sharing agreement and Northwest's extended delay until inauguration. The Port of Portland supports

⁵ Consolidated Reply of United, at 2, citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

Delta's argument that it is inappropriate to allow carriers to "stockpile" limited-entry rights under such circumstances.

D. Motions for Leave to File, Surreplies and Responses

Northwest, in its motion for leave to file and surreply, argues against the selection of American. Northwest emphasizes American's code-sharing agreement with Canadian and a recent refusal by Hong Kong authorities to authorize code-sharing on an extrabilateral basis. The Dallas/Ft. Worth parties, in their motion for leave to file and response to Northwest, support American's proposed Dallas/Ft. Worth-Vancouver-Hong Kong service. American, responding to Northwest, emphasizes that acceptance of American's application would benefit the public interest through expanded options for passengers. American stresses that, at present, Northwest and United control the U.S.- Hong Kong market as the only U.S. carriers with fifth-freedom authority between Hong Kong and Tokyo.

III. Decision

Three carriers have proposed service from a total of three U.S. gateways. American, however, proposes to operate both of its services by code sharing with a third-country airline, for which our agreement with Hong Kong does not provide. Moreover, diplomatic communications have confirmed that the Hong Kong authorities will not currently permit such operations on an extrabilateral basis. While we regret the position of the Hong Kong authorities, it is not our policy to award rights when it has been made abundantly clear that they will not be permitted to be exercised. Accordingly, we will dismiss American's application, without prejudice to reapplying if Hong Kong's position changes.

This decision removes any need to address the question of whether an existing multiple-designation gateway should be changed to single-designation. The only remaining service proposed is Northwest's at Detroit. Northwest will not inaugurate service until 1997, but we see no reason to withhold its designation now, allowing it time to obtain flight routing approval over China and Siberia.

IV. Conclusion

We will accordingly select Detroit as a new gateway for U.S.-Hong Kong services and designate Northwest for that route. No regulatory action with respect to Northwest is necessary, as it already holds certificate authority to serve this market, and the Hong Kong agreement does not limit frequencies for services in that market. We will confirm our earlier award of frequencies to United, and dismiss American's applications without prejudice.

ACCORDINGLY,

1. We dismiss without prejudice the application of American Airlines for exemption authority;
2. We select Detroit as a new gateway for U.S.-Hong Kong service, and Northwest to serve that route;
3. We confirm the February 14, 1996, action of the Director, Office of International Aviation, allocating seven weekly frequencies to United Air Lines, to operate between Chicago and Hong Kong, effective through February 14, 1998, provided, however, that if they are not used for a period of 90 days beginning June 6, 1996 (United's proposed startup date), then the allocation of frequencies shall cease to be effective and they will revert to the Department on the 91st day of their nonuse;
4. We grant the motion of Northwest for leave to file a surreply; and
5. We grant the motions of American and the Dallas/Fort Worth Parties for leave to file a response.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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